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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,791	03/15/2004	Young C. Yoon	4740-256	9207

24112 7590 04/10/2008

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EXAMINER	
AFSHAR, KAMRAN	
ART UNIT	PAPER NUMBER
2617	
MAIL DATE	DELIVERY MODE
04/10/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/800,791	YOON ET AL.	
	Examiner	Art Unit	
	KAMRAN AFSHAR	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 February 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-42* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/28/2008 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1-42 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-42 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-63 of Tsai (U.S. Patent No. 7,346,314) in view of Zhou (U.S. Patent 7,054,656 B2). Although the conflicting claims are not identical, they are not patentably distinct from each other because all the claimed limitations recited in the present application are transparently found in the U.S. Patent No. 7,346,314 with obvious wording variations. The claims of the current application encompass the same subject matter except the instant **"a method of controlling the data transmission rate of a mobile station in a wireless communication network, comprising: providing a forward common power control channel for power controlling a plurality of mobile stations**" whereas the U.S. Patent No. 7,346,314 are to a more generic **"a method of transmit power control at a wireless communication network base station, the method comprising: transmitting power control commands to the mobile station at a first transmit power transmitting non-power control commands to the mobile station at a second transmit power**". In an analogous field of endeavor, Zhou teaches the concept of transmitting power control commands to the mobile station at a first transmit power transmitting non-power control commands to the mobile station at a second transmit power **(See Zhou e.g. forward common power control, PCG, PCB, Co. 4, Lines 39-42, 52-55, non-power control information, power control bits, Co. 5, Lines 15-20, Figs. 94-5 Also see mobile station Figs. 1-3, and 6).** Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to provide above teaching of Zhou to Tsai to provide a technique whereby a mobile station may more efficiently receive information from a base station for non-power control purposes, e.g., such as instructions to a mobile station to transition from a stand-by mode to an active mode whereby minimizing the use of scarce resources such as available battery power as suggested (See Zhou e.g. Co. 1, Lines 60-67).

5. Claims 1-42 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over amended claims 1-48 filed on 04/04/2007 of copending Application No. 10719811. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both basically claim the same subject matter. The claims of the current application encompass the same subject matter except the instant **"a method of controlling the data transmission**

rate of a mobile station in a wireless communication network, comprising: providing a forward common power control channel for power controlling a plurality of mobile stations" whereas the copending Application claims are to a more generic **"a method of common rate control in a reverse link channel in a CDMA network, comprising: estimating a reverse link load; transmitting a periodic load indication indicative of the reverse link load on a common control channel to one or more mobile stations; determining a desired target transmit power based on the estimated reverse link load; and transmitting the target transmit power to at least one mobile station"**. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to implement the copending Application **"a method of common rate control in a reverse link channel in a CDMA network, comprising: estimating a reverse link load; transmitting a periodic load indication indicative of the reverse link load on a common control channel to one or more mobile stations; determining a desired target transmit power based on the estimated reverse link load; and transmitting the target transmit power to at least one mobile station"** as a **"a method of controlling the data transmission rate of a mobile station in a wireless communication network, comprising: providing a forward common power control channel for power controlling a plurality of mobile stations"** because it was notoriously well known to provide a systems and methods for controlling power in a wireless communication system such as CDMA system having multiple reverse-link channels. Adjusting power levels of a first set of channels and a corresponding pilot channel while maintaining a set traffic-to-pilot (T/P) ratio between them, and adjusting T/P ratios for one or more remaining channels independently of the power level of the pilot channel. Wherein a base station determines whether frames received on the first set of channels contain errors and sends messages to a mobile station to increment or decrement the power levels, respectively, if the frames do or do not contain errors. T/P ratios of the additional channels are adjusted by determining whether frames received on the additional channels contain errors, incrementing or decrementing the T/P ratios appropriately, and transmitting the T/P ratios to the mobile station, which controls the transmission parameters for the respective channels in accordance with the received T/P ratios.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 1-42 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-39 of copending Application No. 10/870,275. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both basically claim the same subject matter. The claims of the current application encompass the same subject matter except the instant **"a method of controlling the data transmission rate of a mobile station in a wireless communication network, comprising: providing a forward common power control channel for power controlling a plurality of mobile stations"** whereas the copending Application claims are to a more generic **"**a method of controlling reverse link rates of mobile stations in a wireless communication network comprising: transmitting first rate control commands for general reverse link rate control of one or more mobile stations; and transmitting second rate control commands on an as needed basis for specific reverse link rate control of at least one of the one or more mobile stations, while continuing to transmit the first rate control commands**"**. Therefore, it would have been obvious to one ordinary skill in the art at the time of the invention to implement the copending Application **"a method of controlling reverse link rates of mobile stations in a wireless communication network comprising: transmitting first rate control commands for general reverse link rate control of one or more mobile stations; and transmitting second rate control commands on an as needed basis for specific reverse link rate control of at least one of the one or more mobile stations, while continuing to transmit the first rate control commands"** as a **"a method of controlling the data transmission rate of a mobile station in a wireless communication network, comprising: providing a forward common power control channel for power controlling a plurality of mobile stations"** because it was notoriously well known to provide a method of adjusting a signal power in a variable data rate mode in a mobile communication system, comprises steps of allocating a reference pilot signal level to each of a plurality of data rates supported by the system, adjusting the reference pilot signal level for a changed data rate based on an external control information and adjusting a power control threshold for

secondly adjusting the reference pilot signal level corresponding to the reference pilot signal level whereby the mobile station changes reference pilot power level in a variable rate mode using a direct command.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

Allowable Subject Matter

7. Upon filing a suitable Terminal Disclaimer and proper overcome of the ***Double Patenting rejection*** as discussed above in items 1-2, Claims 1-42 would be allowed.

The following is an examiner's statement of reasons for allowance:

Claims 1-42 would be allowed for the reasons as set forth in applicant's response filed on 02/28/2008 (See Pages 10-11).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a) Lee (U.S. 7,031,741 B2).

b) Wei (U.S. Pub. No.: 2004/0162098 A1).

c) Vanghi (U.S. 6,393,276 B1).

d) Ishida (U.S. 6,975,604 B1).

e) Sarkar (2004/0160914 A1).

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kamran Afshar whose telephone number is (571) 272-7796. The examiner can be reached on Monday-Friday.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, **Trost, William** can be reached @ (571) 272-7872. The fax number for the organization where this application or proceeding is assigned is **571-273-8300** for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kamran Afshar 571-272-7796/

Primary Examiner, Art Unit 2617